

No. 27 of 1907.]

[Promulgated 21st September, 1907.]

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## CAPE OF GOOD HOPE.

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## ACT

### To Amend the Precious Stones Act, 1899.

[Assented to 19th September, 1907.]

Preamble. BE it enacted by the Governor of the Cape of Good Hope with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

#### PART I.

#### MINES.

Repeal of repugnant portions of Act 11 of 1899. 1. So much of Act No. 11 of 1899, entitled "The Precious Stones Act, 1899," as is inconsistent with or repugnant to the provisions of this Act is to the extent of such inconsistency or repugnancy hereby repealed.

Limitation of this part of this Act. 2. Nothing in this part of this Act shall apply to Mines already proclaimed or to rights and privileges acquired at the date of the promulgation of this Act, under any other law.

Definition of "Mine." 3. The word "Mine" shall for the purposes of section three of Act No. 11 of 1899, mean an area of ground bearing precious stones which is continuous in its formation and is contained within a pipe or similar geological formation together with any directly connected overflow or extension of the same.

Definition of "Minerholder." 4. "Minerholder" shall mean the person entitled under the provisions of this Act to work a mine.

#### PROSPECTING.

Prospecting. 5. Notwithstanding anything to the contrary in section five of Act No. 11 of 1899 contained, prospecting and mining shall be prohibited on such places as the Governor may from time to time, by notice in the *Gazette*, exclude from prospecting or mining, nor shall it be lawful to prospect or mine in any place prohibited by the terms of a Prospector's Licence and any person contravening the provisions of this section shall be liable on conviction to pay a fine not exceeding £100, or, in default of payment, to be imprisoned for a period not exceeding six months with or without hard labour.

Licensed prospector may dig or search on abandoned mine by consent of owner of land. 6. Notwithstanding anything to the contrary contained in section ten, or in the second schedule of Act No. 11 of 1899, or in any other law, it shall be lawful for the holder of a prospecting licence to dig or search for precious stones in any mine or digging duly declared abandoned, subject to the consent of the owner of the land on which such mine, or digging, is situated; provided, however, that any such person who shall find any precious stones, whilst prospecting under a licence on such mine, or digging, shall not be entitled to discoverer's claims under the said Act.

## DISCOVERY OF PRECIOUS STONES.

*Rights of Discoverer.*

7. Any prospector discovering a mine upon Crown Land shall be entitled in lieu of the fifty claims mentioned in section twelve of Act No. 11 of 1899 to an undivided one-half share of the extent of the mine and no more, subject to the provisions of this Act and provided such discoverer has discovered a new mine not being merely an extension of an already discovered mine.

Discoverer's rights in respect of mine on Crown Land.

8. Any discoverer discovering such new mine on land the title to which contains a reservation of precious stones to the Crown shall, subject to the provisions of this Act, be entitled to one fourth undivided share of the extent of the mine and no more.

Discoverer's rights in respect of mine on other land subject to a reservation of precious stones.

*Rights of Owner.*

9. The owner of land the title to which contains a reservation of precious stones to the Crown, shall, if he discovers a new mine on his land, be entitled, in lieu of the fifty claims mentioned in section forty-six of Act No. 11 of 1899, to an undivided one-half share of the extent of the said mine, or, if a mine is discovered by some licensed prospector on such land, to an undivided one-fourth share of the extent of the said mine, subject to the provisions of this Act.

Owner's rights in respect of mines discovered on his land.

10. Should a mine be divided into two or more portions by the boundary line or lines of land owned by different persons, each such owner shall be entitled to such an undivided portion of the owner's share as abovementioned of the mine as is represented by the proportion of each owner's land within the area of the mine to the whole area of the mine, taking surface measurements.

Case of mine divided by boundary line between different properties.

*Crown's Share.*

11. The Crown shall be entitled to the undivided share in any mine discovered under the provisions of this Act which remains after deducting the share or shares which are allotted under this Act to the discoverer or discoverers and owner or owners.

The Crown's share.

12. Sections nineteen to twenty-six and sections twenty-nine to thirty-seven inclusive of Act No. 11 of 1899 shall not apply to any new mine discovered after the promulgation of this Act.

Sections 19 to 26 and 29 to 37 of Act 11 of 1899 not to apply to new mine discovered after taking effect of this Act.

*WORKING OF A MINE.*

13. The Governor shall, on application, issue a certificate to the discoverer and to the owner or owners in case of a mine discovered on land the title to which contains a reservation of precious stones to the Crown, certifying the extent of the share in the mine held by such discoverer or owner, and such certificate shall be registered in the office of the Civil Commissioner of the district in the case of Crown Land affected thereby,

Certificate of extent of share of discoverer and owner.



and by the Registrar of Deeds against the title deeds of such land, in the case of land the title to which contains a reservation of precious stones to the Crown, affected thereby.

Joint ownership.

14. The shares of a discoverer and of an owner or owners in the case of a mine discovered on land the title to which contains the aforementioned reservation to the Crown, shall be considered as vested in them jointly for the purposes of this Act and not severally.

Right to work mine.

15. The discoverer in the case of Crown Land and the discoverer or, failing him, the owner or owners in the case of land the title to which contains the reservation aforementioned shall be entitled to work the mine for the purpose of winning precious stones therefrom and shall hereafter be referred to as the mineholder: Provided that nothing in this section shall prevent the discoverer and owner or owners from working the mine jointly.

Discoverer to notify Minister whether he intends working the mine or not.

16. The discoverer shall, within nine months after the proclamation of the mine, notify to the Minister charged with the administration of this Act, in writing, whether he intends to work the mine as provided by this Act or not.

If discoverer unwilling owner may notify whether he intends working the mine.

17. If the discoverer notifies his unwillingness to work the said mine, the owner or owners, in case of a mine on land the title to which contains the aforementioned reservation, shall, within nine months after being requested by the Minister to notify his or their intention, state, in writing, whether he or they or one of them intend to work the mine as aforesaid.

Mineholder to render certain annual accounts to provide working capital.

18. The mineholder shall provide the working capital necessary for the effective working of the mine and shall, for the purpose of the division provided for in section twenty-one hereof, render yearly to the Minister and to any other joint holder of a share in the mine, an account in which shall be set off against the net profit of the mine for the year such working capital actually expended, together with interest thereon at the rate of ten per centum per annum calculated from the last day of the month in which such capital was expended. In each subsequent annual account such interest shall be reckoned on the balance of capital brought forward, together with any additional working capital expended during the year for which the account is rendered. No share in the produce of the mine shall accrue to the Crown until the aggregate net profits of the mine shall equal the working capital so expended from time to time: Provided, however, that if any net profits are paid out before such event to any person holding shares in the mine or in any company working it, the Crown shall be paid its *pro rata* share thereof as hereinafter provided.

Meaning of "working capital."

19. The term "working capital" shall be taken to mean the actual capital expended on the equipment and development of the mine after the date of proclamation, but shall not include the purchase price, if any, paid by the mineholder for the mine

or any mining rights or any costs of prospecting previous to proclamation.

20. The term "net profits" shall be taken to mean that profit left after paying all amounts not being capital outlay actually expended during the year in winning and disposing of precious stones, together with salaries, wages, director's fees, auditor's fees, taxes, insurance, printing, stationery, advertising, maintenance of plant and buildings, agencies, legal expenses, survey expenses, arbitration expenses and office expenses.

Meaning of "net profits."

21. It shall be lawful for the Controller and Auditor-General of the Colony, or any other officer deputed thereto by the Governor, from time to time to examine the books and accounts of the mineholder with respect to the working of the mine and at all reasonable times to have reference to all books and documents which tend to prove the correctness or otherwise of the said accounts.

Audit of books and accounts of mineholder.

22. Subject to the provisions of the preceding sections the net profits obtained from the working of the mine shall be annually divided between the Crown, the mineholder and any other person having a joint share in the said mine, in proportion to their respective shares therein.

Distribution of net profits.

23. Every mineholder shall carry on mining operations to the satisfaction of the Inspector unless work is suspended with the consent of the Minister for any of the following reasons:—

Reasons for which mining operations may be suspended with consent of Minister.

- (1) That time is required for the erection or repair of machinery or shafts.
- (2) The influx or scarcity of water.
- (3) A fall of reef in the mine.
- (4) Scarcity of labour.
- (5) When the *bonâ fide* mining and working expenses of the mine cannot be met by the sale of the precious stones found therein when realised at their true and fair market value.
- (6) Any such other reason as to the Minister may seem just.

24. All differences which may arise between the mineholder and the Crown in respect of carrying out the provisions of this Act, or in respect of any matter affecting their respective interests in the mine or in the disposal of its products or the value of the same, shall be referred for final decision to a Board consisting of an equal number of representatives of the mineholder and the Crown and in addition thereto a Chairman who shall be appointed by the members of the said Board and who shall have a casting vote only. The persons representing the Crown on the Board shall be appointed by the Governor.

Board to settle differences between mineholder and Crown.

25. If the persons entitled under section fourteen to work the mine.

- (1) refuse to work the said mine or fail to notify the Minister within the time allowed whether they intend to work it or not, or,

Penalty for certain omissions or failures on the part of the mineholder.

- (2) if the mineholder fails to find the necessary capital for the working of the said mine within twelve months after its proclamation, or
- (3) fails to properly work the said mine under the provisions of section twenty-two, or
- (4) fails to carry out the decision of the Board mentioned in the last preceding section in respect of any difference referred to such Board,

Tenders. any right which the said persons or the mineholder may have under this Act to work the mine may be determined and the Governor may call for public tenders for the working of the said mine under contract on such terms and conditions as may be agreed upon between the Governor and the persons holding shares in the said mine: Provided always that in case the Governor and the said persons cannot agree, such terms and conditions shall be decided by the Board mentioned in the last preceding section; and provided further that any profits accruing, divisible between the Crown and such persons under any such contract, shall be divided in proportion to their respective holdings.

If no satisfactory tender received. 26. It shall be lawful for the Governor, in case no satisfactory tender is obtainable for the working of the mine under the last preceding section, to lease the said mine to the discoverer or owner on such terms as may be agreed upon or, failing such agreement, to any other person, in which case during the continuance of the lease the provisions of sections seventeen to twenty-one inclusive shall not apply. The rent to be derived from any such lease to a person not being the discoverer or owner shall be divisible between the Crown and the other parties holding joint shares in the mine, in proportion to their respective shares in such mine.

Transfer or mortgage of interest in mine. 27. It shall not be lawful for a discoverer or any person holding a joint share in a proclaimed mine to transfer or mortgage his interest in such mine except with the consent of the Governor. Such transfer or mortgage shall, if allowed, be passed before the Civil Commissioner of the district, who shall each month send a copy of all mortgage bonds so passed to the Registrar of Deeds for filing.

Transfer duty. 28. A transfer duty of one per centum only shall be payable on any such transfer and all other provisions of law as to the payment of transfer dues on immovable property, as far as they apply, shall be taken to be inserted herein.

Proviso to section one hundred and twenty-four of Act No. 11 of 1899 repealed. 29. The proviso to section one hundred and twenty-four of Act No. 11 of 1899, shall be deemed to be repealed as to any mine dealt with under this part of this Act, and proclaimed upon any Native Reserve in British Bechuanaland, and the compensation for surface damage, in such case, shall be such amount as shall upon submission of the matter, as hereby required, to the



Board, referred to in section twenty-three of this Act, be found by such Board to be a fair and just compensation for such surface damage to be paid in accordance with section one hundred and twenty-four of Act No. 11 of 1899, to the Civil Commissioner.

- Compensation for surface damage.

## PART II.

### ALLUVIAL DIGGINGS.

30. Section eighty-five of Act No. 11 of 1899 is hereby repealed and the following substituted :—

“After the said Proclamation, the Discoverer and Owner shall be bound, under penalty of forfeiting their rights, forthwith to peg off the claims to which they are entitled under this Act, and thereafter it shall be lawful for any Certificated Miner to peg off from one to six claims on the area proclaimed, if available : Provided, that for a period of seven days, reckoned from and including the day on which the Proclamation is read by the Inspector of Claims as provided in section eighty-four of the Act aforesaid, each Miner shall only be permitted to peg off one claim—the remaining claims out of the six to which he is entitled and which he may desire to take up to be pegged off at any time after the expiration of that period, if available.”

Provision substituted for Section 85 of Act 11 of 1899.

31. Section eighty-seven of Act No. 11 of 1899 is hereby repealed and the following substituted :—

“In pegging off claims as aforesaid a peg not less than two feet above the ground shall be erected at each corner of the claim, each of such pegs to bear the name of the claimholder and the claim to be kept marked by such pegs at the expense of the claimholder, to the satisfaction of the Inspector or other officer duly appointed : Provided that every claimholder not so marking out and not so keeping marked any claim held by him, shall be liable to a penalty not exceeding £10 for each offence or, in default of payment, to forfeiture of his claim ; and provided further that, in the case of blocks of amalgamated claims, four corner pegs shall be sufficient for each block, but the names of the claimholders in the block shall be legibly marked on each peg with the date of amalgamation.”

Provision substituted for Section 87 of Act 11 of 1899.

32. Section ninety-one of Act No. 11 of 1899 is hereby repealed and the following substituted :—

“In lieu of the certificate provided for by section two of the Griqualand West Proclamation 14 of 1872, or by section seven of the rules and regulations published under Griqualand West Proclamation No. 8 of 1880, no person shall be registered as a Certificated Miner unless and until he shall produce to the

Provision substituted for section 91 of Act 11 of 1899.

Registrar of Claims a Certificate of Character obtained at the Alluvial Diggings where he proposes to take out a claim or at any other diggings in accordance with the following provisions :—

- (a) He shall apply to the Diggers' Committee having jurisdiction in the digging or part of a digging in which he proposes to take out a claim, for a certificate that he is of good character and a fit and proper person to be registered as a claimholder. The decision of the Committee shall be by a majority of members present at a meeting called to consider the application.
- (b) If there is no Diggers' Committee having jurisdiction in such digging or part of a digging as aforesaid, then he shall apply for such Certificate to the Inspector of Claims. The Inspector shall thereupon summon two registered claimholders, or holders of certificates under this section resident within the area of the said digging, to assist him in deciding upon the said applications; and the decision shall be by a majority of the Inspector and registered claimholders or certificate-holders aforesaid.
- (c) If the Diggers' Committee or the Inspector and residents, as the case may be, shall refuse any application for such certificate, then the person desirous of obtaining the same may apply to the Chief of the Detective Department at Kimberley for such certificate. The Chief of the Detective Department may, after inquiry into the case and after communicating with the Diggers' Committee or Inspector aforesaid, grant a certificate that the applicant is of good character and a fit and proper person to be registered as a claimholder.
- (d) No application for a certificate shall be considered until the name and description of the applicant shall have been posted for at least seven days in such conspicuous place and manner in such digging as the Committee or, if there be no Committee, the Inspector of Claims may determine.

“Upon the production of the Certificate of Character aforesaid, the Registrar of Claims shall issue a Miner's Certificate.

“A certificate obtained in terms of this section shall be produced to the registering officer by the person therein referred to when he seeks to be registered as a claimholder.”

Amendment  
of Section 113  
of Act 11 of  
1899.

33. The words “on payment by him of the licence money thereon one month in advance” occurring in section one hundred and thirteen of Act No. 11 of 1899 are, save as to existing rights and obligations, hereby repealed and from and after the promulgation of this Act the following words shall be read as if inserted therein :—

“And no licence money shall be payable on such claims whilst they are held by such owner in his own right.”



## PART III.

## DREDGING FOR PRECIOUS STONES.

34. Notwithstanding any law to the contrary the Governor may grant leases for the purpose of dredging and sluicing for precious stones in any public river, the bed of which, within the limits of the leased portion, is not vested in any private individual, upon such terms and conditions, subject to the provisions of this part of this Act as may be agreed upon.

Leases for dredging and sluicing for precious stones.

35. The lease may be for any length, not exceeding four miles, of a river in which ordinary alluvial mining cannot be carried on and shall be registered in the office of the Civil Commissioner of the district with a sketch plan attached showing the approximate boundaries of the portion of the river so leased.

Extent of lease.

36. The lease shall be for a period of three years renewable from time to time at the option of the lessee, but not exceed a period in all of nine years and shall be solely for the purpose of such dredging.

Lease renewable.

37. The lessee shall not obstruct the free navigation of the river or deprive the public or any person entitled thereto of any of the water of the said river or place anything therein or thereon hurtful to such right or interfere with the right of any person to make and work breakwaters or conduct other operations in connection with alluvial digging in the said river.

Obligations of lessee.

38. The lessee shall be bound during the currency of the lease to carry on *bonâ fide* operations and to obey all regulations which may be prescribed by the Governor under this Act for the better carrying out of its provisions, failing which the lease shall be liable to forfeiture.

Lessee to carry on *bonâ fide* operations and to obey regulations.

39. The lessee shall pay a rental of £5 per mile per annum for the first year calculated from the date of commencement of dredging operations and a royalty of One Pound per centum on the amount realised by the sale of precious stones won by such dredging during the second and succeeding years of any such lease as aforesaid.

Rental.

40. The lessee shall require the permit provided for in section six of Act No. 48 of 1882, entitled "The Diamond Trade Act, 1882," for any diamonds found by the lessee in the course of his dredging operations, and all diamonds for which such permit is granted shall be registered in a book to be kept for that purpose by the said Magistrate: Provided that the declaration referred to in the said section shall only be required to be made once a month and not later than the seventh day of the month succeeding the month in respect of which the said declaration is made.

Permit under Section 6 of Act 48 of 1882 required for diamonds discovered.



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Lessee to  
keep proper  
books.

41. The lessee shall keep proper books showing the number and weight of the precious stones won by him and the amounts from time to time realised by their sale and shall pay over to the Civil Commissioner of the district, or other officer appointed for the purpose, half-yearly the amount of royalty due thereon, and any lessee failing for six months to pay over any such royalty due shall be liable to forfeit his said lease.

Books open  
to Govern-  
ment inspec-  
tion.

42. All books and supporting documents kept by such lessee shall be open to Government inspection at all reasonable times.

Short Title.

43. This Act may be cited as "The Precious Stones Act Amendment Act, 1907."